

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.1936 OF 2023

Kiran Prakash Renke

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

Mr. Abhay Arun Jadhavar, for Applicant.

Mr. P. P. Deokar, APP, for Respondent No.1-State.

Ms. Savvy Kolhekar, for Respondent No.2.

CORAM: MADHAV J. JAMDAR, J.

DATED: 08th MAY 2024

P. C.

1. Heard Mr. Jadhavar, learned Counsel for the Applicant, Mr. Deokar, learned APP for the Respondent No.1-State and Ms. Kolhekar, learned Counsel appointed to represent the interests of Respondent No.2.

2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973*. The relevant details are as follows:

1	C.R. No.	767 of 2021
2	Date of registration of F.I.R.	19/12/2021
3	Name of Police Station	Khed, District-Pune
4	Sections invoked	363, 376(2)(j) & (n) & 376(3) of the <i>I.P.C., 1860</i> ; 4, 8 & 12 of the <i>POCSO Act, 2012</i> .
5	Date of incident	19/12/2021
6	Date of arrest	31/01/2022

7	Date of filing Charge-sheet	29/03/2022
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3. As per the prosecution case, the Applicant is the maternal uncle of the victim. Initially, F.I.R. was lodged for the offence punishable Section 363 of the *Indian Penal Code, 1860* (“IPC”) on 19th December 2021 as the victim was not found at her house. Various statements recorded during the investigation show that the Applicant and the victim had gone to Shirdi. They got married to each other in a temple. They were residing together at Baramati from 20th December 2021 till 31st January 2022. As per the prosecution case, during said period, the Applicant had physical and sexual relations with the victim. At the relevant time, the age of the victim was 13 years and 4 months and the age of the Applicant was 23 years.

4. It is the contention of Mr. Jadhavar, learned Counsel for the Applicant that in fact it was the victim who had insisted the Applicant that they should get married as her family members were in the process of arranging her marriage with someone else and therefore on the insistence of the victim, the Applicant and the victim eloped and got married. He submitted that the Applicant was arrested on 31st January 2022, investigation has been completed and Charge-sheet has been filed on 29th March 2022. Till date, there is no progress in the trial and even the charge is also not framed. He relied on the decision of a learned Single Judge of this Court [Nagpur Bench] dated 5th January 2024

passed in the Criminal Application (BA) No.718 of 2023 in the case of *Nitin Damodar Dhaberao v. State of Maharashtra*¹ and more particularly on paragraph No.6 thereof. He also relied on the decision of a learned Single Judge of this Court dated 8th October 2018 passed in Bail Application No.2615 of 2018 in the case of *Ramchandra Sambhaji Sonawane v. State of Maharashtra*² and more particularly on paragraph No.4 thereof. He also relied on the decision of this Court dated 27th February 2024 passed in Bail Application No.1518 of 2023 in the case of *Ganesh Dyandev Jadhav v. State of Maharashtra*³ and particularly on paragraph Nos.5, 6, and 7 thereof. He submitted that the Applicant is a young man aged 23 years and his entire life will be adversely affected if he is not enlarged on bail. He therefore submitted that the Bail Application be allowed.

5. On the other hand, Mr. Deokar, learned APP and Ms. Kolhekar, learned Counsel appointed to represent the interest of Respondent No.2 strongly opposed the Bail Application. They submitted that at the relevant time, age of the victim was only 13 years and 4 months and therefore her consent is totally irrelevant in law. Both of them submitted that the statement of the victim dated 31st January 2022 as well as her statement recorded under Section 164 of the CrPC clearly show that the Applicant had physical relations with the victim. Both of them

1 2024 SCC OnLine Bom 120

2 2018:BHC-AS:28143

3 2024:BHC-AS:9365

submitted that the medical evidence is in consonance with the prosecution case. They submitted that the Applicant and the victim are close relatives and therefore the Applicant should have refrained from committing the offence in question. Both of them submitted that the punishment for the offence in question is very severe and therefore the Applicant be not enlarged on bail.

6. Ms. Kolhekar, learned Counsel appointed to represent the interest of Respondent No.2 submitted a written note regarding Sections invoked and the punishment for the same. She submitted that the minimum punishment for the offences under Sections 4 and 6 of the *Protection of Children from Sexual Offences Act, 2012* (“POCSO Act”) is imprisonment for not less than 20 years. She submitted that even the punishment for the offences under Section 376, 376(2)(j), (n) and 376(3) of the *Indian Penal Code, 1860* (“IPC”) is also imprisonment not less than 10 years. She therefore submitted that the Bail Application be rejected. She also relied on the decision of the Supreme Court in the case of *Satish Kumar Jayanti Lal Dabgar v. State of Gujarat* ⁴ and submitted that consent of the victim is entirely irrelevant. She relied on paragraph Nos.14 and 15 of *Dabgar* (Supra). She also relied on the decision of the Supreme Court in the case of *X (Minor) v. State of Jharkhand* ⁵ dated 21.02.2022 passed in Criminal Appeal No.263 of

4 (2015) 7 SCC 359

5 2022 LiveLaw (SC) 194

2022.

7. Perusal of the record shows that the incident in question took place between 19th December 2021 and 31st January 2022. Initially, F.I.R. was lodged only under Section 363 of IPC on 19th December 2021 and thereafter Sections 376(2)(j)(n) and 376(3) of IPC and Sections 12 of the POCSO Act were invoked. The Applicant was arrested on 31st January 2022 and the Charge-sheet has been filed on 29th March 2022. As per the Charge-sheet, there are a total of 16 witnesses proposed to be examined by the prosecution and till date there is no progress in the trial and even the charge is also not framed. Thus, the trial will take a considerably long time to conclude.

8. It is significant to note the statement of the victim before the learned Judicial Magistrate First Class, Khed-Rajgurunagar, District-Pune under Section 163 of CrPC, which reads as under:

“मी प्रतिज्ञापूर्वक कथन करते की, मी पाबळरोड, राजगुरुनगर खेड येथे राहते. घरी माझे आई — वडील, मोठी बहिण आणि लहान भाऊ असतात. माझे शिक्षण ६ वी पर्यंत झाले आहे. मी १९/१२/२०२१ रोजी सकाळी ७.०० च्या दरम्यान खेड वरून शिर्डीला गेली. आरोपी किरण रेनके माझा सख्खा मामा आहे. ते माझ्या घरी यायचे व आम्ही पण त्याच्या घरी जायचो. घटनेच्या ७—८ महिन्या अगोदर आमचे प्रेम संबंध सुरू झाले. मला ते आवडतात असे मीच त्यांना सांगितले त्याकरिता ते मला फोन करायचे त्यांचे लग्न झाले असल्यामुळे ते नाही म्हणायचे व तु लहान आहे असे पण मला सांगायचे पण मी तयार नव्हती आणि त्यांना फोन करायची. दरम्यान माझ्या लग्नासाठी मला पाहुणे बघायला यायचे. मला लग्न करायचे नव्हते म्हणून घटनेच्या ५—६ दिवसा अगोदर मी आरोपी किरण यांना सांगितले की, मला लग्न करायचे नाही व आपण पळून जावू. त्यांनी मला माझे वय १८ वर्षे पूर्ण नसल्यामुळे मला नाही म्हटले पण मी त्यांना जावू असे म्हटले. तसेच माझे वय

१८ वर्षे पूर्ण झाल्यानंतर कोर्ट मॅरेज करू असे म्हटले. तेव्हा ते नको म्हणत असतांनाही मी त्यांना जावू असे म्हटले व दि.१९/१२/२०२१ रोजी आम्ही जायचे ठरविले. त्याप्रमाणे मी दि. १९/१२/२०२१ रोजी सकाळी ७.०० च्या दरम्यान खेड वरून शिर्डीला गेली. तिथे आम्ही एक दिवस लॉजवर राहिलो. दुसऱ्या दिवशी आम्ही बारामतीला गेलो व तिथे भाड्याने रूम केली व महिनाभर तिथे राहिलो. त्यानंतर पोलीसांनी आम्हाला खेडला आणले या दरम्यान आम्ही शिर्डीला थांबलेलो असतांना मंदिरात लग्न केले त्यानंतर आमच्या मध्ये दोघांच्या मर्जीने शारीरिक संबंध देखील झाले.”

(Emphasis added)

English translation of the same is as follows:

“I reside at Pabal road, Rajgurunagar, Khed. My family consists of my parents, elder sister and younger brother. I have studied up to 6th Standard. On the date 19.12.2021, at around 07.00 a.m., I went to Shirdi from Khed. **The Accused Kiran Renake is my real maternal uncle. He used to visit our house and even we used to visit his house. Before 7-8 months prior to the incident, we fell in love with each other and I myself told him that I liked him. Therefore, he used to telephone me. But, as he was married, he used to say ‘No’ and used to convince me by saying that I was minor. But I was not ready to accept his say and used to telephone him. During the said period, my family used to get proposals for my marriage and the relatives from the said families used to visit our house to see me. But, as I did not want to get married, 5-6 days prior to the incident, I told the Accused Kiran that I did not want to get married and that we would elope. But as I had not completed 18 years of age, he refused to do so but I insisted him to elope and told him that we would do ‘Court marriage’ after I complete 18 years of my age. At that time, despite his saying as ‘No’, I told him that we would elope and**

decided to elope on the date 19.12.2021. Accordingly, on the date 19.12.2021 at around 7.00 a.m., I went to Shirdi from Khed and we stayed there at one Lodge for one day. On the next day, we went to Baramati and hired a room and stayed there for a month. Thereafter, the Police brought us to Khed. While we stayed at Shirdi during that period, we got married in one temple and thereafter, we had physical relations between us with the consent of both of us.”

9. Thus, it is clear that this is a case where the victim was insisting that both of them i.e. the victim and the Applicant should enter into a relationship and get married. In fact, the Applicant told her that he is already married. The victim is a minor. It is required to be noted that the Applicant is the maternal uncle of the victim and therefore the victim was completely aware about the fact that the Applicant is married. In fact, in her statement dated 31st January 2022 (Page 44) the victim has specifically stated that the Applicant is married and is having a 2 years old daughter, however, as there was a dispute between the Applicant and his wife, the wife was residing at her parent’s house.

10. It is also required to note the medical history as recorded by the Doctors (Page 89). The same clearly shows that the relations were consensual.

11. Learned Counsel for the Applicant has relied on *Nitin Damodar Dhaberao* (supra) and more particularly on paragraph No.6 thereof which reads as under:

“6. Having heard learned Counsel for the applicant and learned APP for the State. Perused the investigation papers. There is no dispute as to the fact that applicant is arrested on 30.08.2020 and there is no progress in the trial though charge-sheet is filed on 26.10.2020. As far as merit is concerned, admittedly victim is of 13 years of age and her consent is not relevant. However, the statements which are recorded by the Investigation Officer shows that victim has left her house at her own accord on the pretext of bringing the book from friend and not returned back at home. She also joined the company of the present applicant and also admitted her love relationship with the present applicant in her statement. From her statement it reveals that, she stayed along with the present applicant at various places and not made any grievance as she was taken by the present applicant by using some force. Thus it is apparent that, out of the love affair, she joined the company of the present applicant. The applicant is also of a tender age of 26 years and out of love affair they come together. It seems that, the alleged incident of sexual relationship is out of the attraction between the two young persons and it is not the case that applicant has subjected the victim for a sexual assault out of lust. Considering the fact that, though charge-sheet is filed long back in the year 2020 and there is no progress in the trial and trial will take its own time for final disposal. In view of that, further incarceration of the present applicant is not required and no purpose will be served by keeping him behind bar. In view of that, the application deserves to be allowed by imposing certain conditions.”

12. He has also relied on *Ramchandra Sonawane* (Supra) and more particularly on paragraph No.4 thereof, which reads as under:

“4. Be that as it may, it is seen that the charge sheet has already been filed. The presence of the Applicant is therefore not required in custody for the purpose of investigation or interrogation. The Applicant is a young boy in his early 20's. He is in custody since 14.9.2017. Detaining him further is likely to bring him in contact with other criminals which may turn him into a hardened criminal.”

13. He has also relied on *Ganesh Jadhav* (supra) and particular on

paragraph No.5 thereof, which reads as under:

“5. Perusal of the record shows that the offence was registered on 13th September 2022, the Applicant was arrested on 16th September 2022 and Charge-sheet was filed on 9th November 2022. Till date, there is no progress in the trial.

6. The trial is likely to take a considerably long time.

7. Perusal of the statement recorded under Section 164 Cr.P.C., 1973 shows that the victim has not supported the case of the prosecution. Even the medical evidence also does not support the case of the prosecution. The apprehension that the Applicant will influence the prosecution witnesses and pressurise them can be taken care of by imposing stringent conditions.”

14. Thus, although it is correct that as the victim was aged only 13 years and 4 months, her consent was totally irrelevant, however, the statement of the victim recorded under Section 164 of CrPC as well as the F.I.R. lodged by her mother clearly show that the victim had left the house on her own volition and owing to the said relationship, both, the Applicant and the victim lived together. A learned Single Judge in *Damodar Dhaberao* (supra) held that the incident of sexual relationship arises out of the attraction between two young persons and it is not the case that Applicant has subjected the victim to sexual assault out of lust. The reasoning given in *Ramchandra Sonawane* (supra) and *Ganesh Jadhav* (supra) as set out herein above, is also applicable to the facts of the present case.

15. As far as the decision in the case of *Satish Dabgar* (supra) on which Ms. Kolhekar, learned Counsel appointed to represent the interest

of Respondent No.2 has relied, paragraph Nos.14 and 15 thereof are relevant. The said paragraph Nos.14 and 15 read as under:-

“14. The first thing which is to be borne in mind is that the prosecutrix was less than 16 years of age. On this fact, clause sixthly of Section 375 IPC would get attracted making her consent for sexual intercourse as immaterial and inconsequential. It reads as follows:

“375. Rape.—A man is said to commit ‘rape’ who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions—

Sixthly.—With or without her consent, when she is under sixteen years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.”

15. The legislature has introduced the aforesaid provision with sound rationale and there is an important objective behind such a provision. It is considered that a minor is incapable of thinking rationally and giving any consent. For this reason, whether it is civil law or criminal law, the consent of a minor is not treated as valid consent. Here the provision is concerning a girl child who is not only minor but less than 16 years of age. A minor girl can be easily lured into giving consent for such an act without understanding the implications thereof. Such a consent, therefore, is treated as not an informed consent given after understanding the pros and cons as well as consequences of the intended action. Therefore, as a necessary corollary, duty is cast on the other person in not taking advantage of the so-called consent given by a girl who is less than 16 years of age. Even when there is a consent of a girl below 16 years, the other partner in the sexual act is treated as criminal who has committed the offence of rape. The law leaves no choice to him and he cannot plead that the act was consensual. A fortiori, the so-

called consent of the prosecutrix below 16 years of age cannot be treated as mitigating circumstance.”

16. However, it is to be noted that the decision of the Supreme Court in *Satish Dabgar* (Supra) was after conviction. In the said case, the learned Trial Court had convicted the said Applicant and the same was confirmed with some modification by the High Court. The Supreme Court confirmed the said conviction. Thus, *Satish Dabgar* (Supra) will have no relevance in the facts of the present case as this is a Bail Application and the point involved is whether in the facts and circumstances the Applicant is entitled for bail.

17. It is true that the age of the victim was about 13 years and 4 months and her consent is totally irrelevant and inconsequential. It is also true that, as held in *Satish Dabgar* (supra), a minor girl can easily be lured into giving consent for such an act without understanding the implications thereof. Such a consent, therefore, is treated as not an informed consent given after understanding the pros and cons as well as consequences of the intended action. Therefore, as a necessary corollary, a duty is cast on the other person in not taking advantage of the so-called consent given by a girl who is less than 16 years of age.

18. However, the factual position in the present case as reflected in the statement of the victim recorded under Section 164 of the CrPC is that the Applicant was in fact opposing the proposal of the victim that the Applicant and the victim should elope. In fact, it is at the instance of

the victim the Applicant took her to Shirdi and thereafter both of them stayed at Baramati. Section 164 of CrPC statement of the victim clearly shows that the family members of the victim were in the process of arranging the marriage of the victim with someone else and therefore as per the insistence of the victim both of them eloped. Therefore, the observations in *Satish Dabgar* (supra) are not applicable to the present case.

19. Ms. Kolhekar, has relied on *X (Minor)* (supra). However, it is to be noted that the Applicant in that case, had lodged an F.I.R. on 27th January 2021, allegations in the F.I.R. are that when the said Appellant was a minor, the Accused had taken her to a residential hotel and had entered into a sexual relationship on the assurance of marrying her. The Accused later refused to marry her and that he had sent certain obscene videos to her father. As the Anticipatory Bail was rejected, the Accused surrendered on 3rd April 2021. The Charge-sheet was submitted on 24th May 2021. The High Court allowed the Bail Application by Order dated 2/3 August 2021. In the above context, the Supreme Court while setting aside the Order granting bail has held as follows:

“6. The High Court was manifestly in error in allowing the application for bail. The reason that from the statement under Section 164 and the averments in the FIR, it appears that “there was a love affair” between the appellant and the second respondent and that the case was instituted on the refusal of the second respondent to marry the appellant, is specious. Once, prima facie, it appears from the material before the Court that the appellant was barely thirteen years

of age on the date when the alleged offence took place, both the grounds, namely that “there was a love affair” between the appellant and the second respondent as well as the alleged refusal to marry, are circumstances which will have no bearing on the grant of bail. Having regard to the age of the prosecutrix and the nature and gravity of the crime, no case for the grant of bail was established. The order of the High Court granting bail has to be interfered with since the circumstances which prevailed with the High Court are extraneous in view of the age of the prosecutrix, having regard to the provisions of Section 376 of IPC and Section 6 of POCSO.”

The Supreme Court has stated that having regard to the age of the prosecutrix and the nature and gravity of the crime, no case for the grant of bail was established.

20. In the present case, although it is true that the age of the victim was 13 years and 4 months, however, this is a case where the victim herself was insisting to elope as mentioned in the statement recorded under Section 164 of CrPC. Apart from that it is also important to note that the victim took the said steps as her family members were in the process of arranging her marriage with someone else. Thus, the facts in *X (Minor)* (supra) are different from the factual position in the present case.

21. The Applicant is young man aged 23 years.

22. The Applicant does not have any criminal antecedents.

23. The Applicant does not appear to be at risk of flight.

24. Accordingly, the Applicant can be enlarged on bail by imposing conditions.

25. In view thereof, the following order:

ORDER

- (a) The Applicant - Kiran Prakash Renke be released on bail in connection with C.R. No.767 of 2021 registered with the Khed Police Station, District – Pune on his furnishing P.R. Bond of Rs.25,000/- with one or two local solvent sureties in the like amount.
- (b) The Applicant shall not enter the Taluka – Khed, District – Pune after being released on bail, except for reporting to the Investigating Officer, if called, and for attending the trial.
- (c) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.
- (d) The Applicant shall report to the Junnar Police Station, District – Pune once every week i.e. on every Sunday between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial. The Police Inspector of Junnar Police Station, District – Pune to communicate details thereof to the Investigating Officer.
- (e) The Applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel.
- (f) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.
- (g) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.

(h) The Applicant shall surrender his passport, if any, to the Investigating Officer.

26. The Bail Application is disposed of accordingly.

27. It is clarified that the Trial Court shall decide the case on its merits, uninfluenced by the *prima facie* observations made in this Order.

28. This Court places on record its appreciation for the assistance rendered by Ms. Savvy Kolhekar, learned Counsel appointed to represent the interest of Respondent No.2. Professional charges be paid to her as per rules and her name be included on the Panel of Advocates of the High Court Legal Services Committee, Mumbai.

[MADHAV J. JAMDAR, J.]